

FCC MAIL SECTION

Federal Communications Commission

DA 99-724

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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Amendment of Section 73.202(b),)	MM Docket No. 97-174
FM Table of Allotments,)	RM-9146
FM Broadcast Stations.)	RM-9262
(Hamilton, Meridian, and)	
Marble Falls, Texas))	

REPORT AND ORDER (Proceeding Terminated)**Adopted: April 7, 1999****Released: April 16, 1999**

By the Chief, Allocations Branch:

1. The Commission has before it the *Notice of Proposed Rule Making*, 12 FCC Rcd 11645 (1997) ("Notice"), issued in response to a petition filed by North Texas Broadcasting, Inc. ("petitioner"). Petitioner requested the allotment of Channel 285C3 at Hamilton Texas. Maxagrid Broadcasting Corp. ("Maxagrid"), licensee of Station KBAE(FM), Marble Falls, Texas, filed comments and a counterproposal requesting the substitution of Channel 285C2 for 285C3 at Marble Falls, Texas, the modification of Station KBAE's authorization accordingly, and the allotment of Channel 285A at Meridian, Texas, as the community's first local transmission service.¹ Petitioner filed comments in support of its petition for rule making and reply comments in response to Maxagrid's comments and counterproposal.

2. In its counterproposal, Maxagrid states that its proposal will fulfill a higher FM allotment priority than petitioner's and warrants a preference in a comparative analysis.² Specifically, Maxagrid states that its proposal at Meridian proposes a first local transmission service, triggering Priority 3, whereas petitioner's proposal would constitute a second local aural service, triggering Priority 4.

3. Maxagrid claims that its proposal will serve the public interest. In support of the allotment at Meridian, Maxagrid states that Meridian qualifies as a community for allotment purposes as it is an incorporated city with a 1990 U.S. Census population of 1,390 persons. In further support of the allotment, Maxagrid points out that Meridian has its own post office, zip code, police force, government, Chamber of Commerce, businesses and churches. Maxagrid therefore alleges that the community is deserving a local radio transmission outlet. In addition, Maxagrid claims that its proposal for Marble Falls will serve the public interest by allowing its Station KBAE(FM) to upgrade at Marble Falls, Texas, and thus serve more listeners.

¹ In a previous proceeding in MM Docket No. 95-49, Maxagrid requested and was granted a channel substitution from 284C3 to 285C3 and a change of community from Llano to Marble Falls, Texas for Station KBAE(FM). These changes are now final. See 63 FR 71389 (12/28/98).

² *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982). These priorities are: (1) first fulltime aural reception service; (2) second fulltime aural reception service; (3) first local transmission service; and (4) other public interest matters, with co-equal weight given to priorities (2) and (3).

4. Maxagrid also alleges that petitioner abused the Commission's processes by requesting coordinates that would prevent Station KBAE(FM) from upgrading to a higher class channel. In support of this, it argues that petitioner has suspect motives in filing this petition because it is using a particular engineer, and the site specified in its petition limits the ability of Station KBAE to upgrade. Maxagrid asks the Commission to compel petitioner to reveal the "true identity" of its principals and explain the reasons for the site restriction they chose. In its reply comments, petitioner responds to Maxagrid's allegations as to its character, and denies any intent to block Station KBAE(FM). It claims that the site restriction it requested was in the opposite direction from the direction Maxagrid alleges, actually away from Station KBAE(FM), and was not calculated in any way to inhibit that station's ability to upgrade. We will deny Maxagrid's request without analysis or consideration. First, the Commission is not required to use the site specified in a petition, and therefore the site selected by a petitioner is not necessarily the allotment site. Second, the Commission does not routinely require petitioners to identify their principals because there is no ownership interest or authorization attached to a petition for rule making for a new allotment. Further, Maxagrid provides no substantiation for its allegation that petitioner abused the allotment process. We therefore will not consider the allegation further.

5. We note that both prongs of Maxagrid's proposal are mutually exclusive with petitioner's proposal at Hamilton. As stated above, Maxagrid's proposal at Meridian would provide a first local transmission service to the community, and its proposal at Marble Falls would allow Station KBAE(FM) to upgrade to expand its service area. As noted in the *Notice*, petitioner's proposal at Hamilton would provide a second local transmission, first local FM service. Under the FM allotment priorities, the Meridian proposal fulfills Priority Number 3, and the Marble Falls and Hamilton proposals both fulfill Priority Number 4. Since the Maxagrid Meridian proposal fulfills a higher allotment priority, and there are no alternate channels available to accommodate petitioner's proposal at Hamilton, we will grant the Maxagrid proposal, including the drop-in at Meridian and the upgrade at Marble Falls, and deny petitioner's proposal at Hamilton.

6. We believe the public interest would be served by allotting Channel 285A to Meridian, Texas, as it will provide the community with its first local transmission service. Channel 285A can be allotted to Meridian, Texas, in compliance with the minimum distance separation requirements of the Commission's Rules with a site restriction of 7.6 kilometers northwest.³ We also believe the public interest will be served by the substitution of Channel 285C2 for 285C3 at Marble Falls, Texas, and the modification of Station KBAE's authorization to reflect the upgraded channel.⁴

7. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective [fill in date] , 1998, the FM Table of

³ The site coordinates for Meridian are 31-59-07 and 97-41-22. We note that this site is short-spaced to a subsequently filed one-step upgrade application (File No. BPH-980130IC) for Channel 285C1 at Pilot Point, Texas. Commission engineering analysis reveals that no other sites are available to accommodate both the Meridian allotment and the application. The applicant's site is not entitled to cut-off protection because the application was filed after the rulemaking petition and the counterproposal deadline in this proceeding and is considered a site preference. See *Report and Order* in MM Docket No. 91-348, 7 FCC Rcd 4917 (1992), *recon.* 8 FCC Rcd 4743 (1993); see also 47 CFR §73.208(a)(1)(i).

⁴ The site coordinates for Marble Falls are 30-36-33 and 98-22-10.

Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the communities listed below, as follows:

Community	Channel Number
Meridian, Texas	285A
Marble Falls, Texas	285C2

8. IT IS FURTHER ORDERED, That the Secretary of the Commission shall send by Certified Mail, Return Receipt Requested, a copy of this Order to the following:

John J. McVeigh
12101 Blue Paper Trail
Columbia, MD 21044
(Attorney for Maxagrid Broadcasting Corp)

William D. Silva
Law Offices of William D. Silva
5335 Wisconsin Ave. N.W.
Suite 400
Washington, D.C. 20015
(Attorney for North Texas Broadcasting)

9. A filing window for Channel 285A at Meridian, Texas, will not be opened at this time. Instead, the issue of opening a filing window for Channel 285A at Meridian will be addressed by the Commission in a subsequent Order.

10. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the authorization of Maxagrid Broadcasting Company for Station KBAE(FM), Marble Falls, Texas, IS MODIFIED to specify operation on Channel 285C2 in lieu of Channel 285C3, subject to the following conditions:

- (a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;
- (b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and
- (c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

11. Pursuant to Commission Rule Section 1.1104(1)(k) and (2)(k), any party seeking a change in community of license of an FM or television allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, Maxagrid Broadcasting Company, licensee of Station KBAE(FM), Marble Falls, Texas, is required to submit a rule making fee in addition to the fee required for the applications to effectuate the upgrade of its license from Channel 285C3 to Channel 285C2.

12. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

13. IT IS FURTHER ORDERED, That the petition filed by North Texas Broadcasting, Inc., IS DENIED.

14. For further information concerning the above, contact Victoria McCauley, Mass Media Bureau, (202) 418-2130. Questions related to the window application filing process for Channel 285A at Meridian, Texas should be addressed to the Audio Services Division, Mass Media Bureau, (202) 418-2700.

FEDERAL COMMUNICATIONS COMMISSION

**John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau**